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January 27, 2010

**DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: October 5, 2009

Case Number: TSO-0831

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> As explained below, it is my decision that the individual should be granted an access authorization.<sup>2</sup>

**I. BACKGROUND**

The individual has worked for Department of Energy (DOE) contractors since 2005, and has worked for his current DOE contractor employer since July 2006. The individual's employer requested that he be granted an access authorization and in April 2007, the individual submitted a Questionnaire for National Security Positions (the 2007 QNSP) to the DOE. Based on information reported on the

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<sup>1</sup> Decisions issued by the Office of Hearings and Appeals (OHA), with names and other personal identifying information deleted, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine at <http://www.oha.doe.gov/search.htm>.

<sup>2</sup> Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

2007 QNSP, the Local Security Office (LSO) conducted Personnel Security Interviews with the individual in December 2008 (the 2008 PSI) and February 2009 (the 2009 PSI). In addition, the LSO sent the individual in April 2009 to a DOE-consultant psychologist (the DOE-consultant Psychologist) for a psychological evaluation. The DOE-consultant Psychologist issued a Psychological Evaluation Report on the individual (the April 2009 Report; DOE Exhibit 3) which contained his conclusions and observations.

In July 2009, the LSO issued a Notification Letter to the individual, together with a statement setting forth the information that created a substantial doubt about the individual's eligibility to hold a DOE security clearance. According to the LSO, the individual's behavior has raised security concerns under 10 C.F.R. § 710.8(h) of the regulations governing eligibility for access to classified material (Criterion H). Specifically, the LSO recites that the DOE-consultant Psychologist diagnosed the individual as suffering from Antisocial Personality Disorder (ASPD), an illness or mental condition which causes or may cause, a significant defect in judgment and reliability. The LSO also cites the following information concerning the individual's failure to conform his behavior to social norms, which supports the ASPD diagnosis:

- (1) In 2009 the individual admitted that, during his marriage, he had problems with his temper, and that he would get frustrated easily and take it out on the people close to him;
- (2) In 2003, the individual pled guilty in a court martial procedure to slapping his son in approximately 1997, slapping his wife, assaulting his wife with intent to commit rape, and failing to obey orders in 2002;
- (3) In 2002, the individual was arrested and spent ten months incarcerated in a United States military facility and his military security clearance was revoked based on his repeated and willful violations of the military protective order filed by his wife, and substantiated findings of sexual abuse;<sup>3</sup>
- (4) In 1995, the individual was arrested for a firearms charge of carrying a loaded weapon and possession of counterfeit money; and
- (5) In about 1986, while in high school, the individual was expelled from school for a variety of reasons and sent to a residential treatment program for children with behavioral problems.

DOE Ex. 1.

The individual requested a hearing (hereinafter "the hearing") to respond to the concerns raised in the Notification Letter. On October 5, 2009, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter in December 2009, I received testimony from eight persons. The LSO presented the testimony of the DOE-consultant

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<sup>3</sup> The individual's military incarceration and his bad conduct military discharge potentially raised an issue under section 1072 of the National Defense Authorization Act for Fiscal Year 2008 (50 U.S.C. § 435b, section 3002), otherwise known as the Bond Amendment. The LSO reviewed the matter, determined that the Bond Amendment did not apply to the facts of this case, and then referred the case to OHA for administrative review.

Psychologist. The individual testified and was assisted by a friend/co-worker who also testified on his behalf (the friend/co-worker). In addition, the individual presented the testimony of a psychologist he consulted concerning the DOE-consultant Psychologist's diagnosis of ASPD (the individual's psychologist), the pastor of his church, his supervisor, and two former housemates who also are co-workers (the housemate/co-workers). The individual submitted 60 hearing exhibits, including recent letters from his son, his mother, his ex-wife's father, a former girlfriend, two of his sisters, a cousin, two high school friends, a high school employer, and his middle school principal.

## II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing*, Case No. VSO-0002 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing*, Case No. VSO-0005 (1995), *aff'd*, Case No. VSA-0005 (1995). *See also* 10 C.F.R. § 710.7(c).

## III. FINDINGS OF FACT AND ANALYSIS

The individual contests the diagnosis of ASPD and his psychologist supported his position in this regard. The individual also testified that since 2002, he has not engaged in any instances of questionable behavior, and that he has made good life choices, such as completing college, becoming more involved with his church, maintaining positive relationships with his children, and providing them with voluntary financial support. Hearing Transcript (TR) at 106-109, 192-194.

As the medical experts view the individual's incidents of bad conduct as crucial to the appropriateness of the individual's diagnosis, I will first set forth the diagnostic criteria that formed the basis for the DOE-consultant Psychologist's diagnosis, and then analyze the testimony and evidence presented at the hearing concerning the instances of bad conduct cited by the DOE-consultant Psychologist. I will then evaluate the evidence presented by the individual concerning

his good conduct since he was released from a military jail in July 2003. Finally, I will analyze the opinions expressed by the medical experts concerning the testimony and evidence presented at the hearing, and present my conclusions concerning the appropriateness of the individual's ASPD diagnosis and his risk of acting unreliably or with poor judgment in the future.

### **1. The Factual Bases for the DOE-consultant Psychologist's ASPD Diagnosis**

As discussed above, in May 2009, the DOE-consultant Psychologist diagnosed the individual as suffering from ASPD. The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (the DSM-IV-TR) states, in pertinent part, that ASPD is properly diagnosable when there is evidence of a conduct disorder before the age of 15 years, followed by a pervasive pattern of disregard for and violation of the rights of others occurring since age 15 years, as indicated by three or more of the following criteria:

- (1) failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest;
- (2) deceitfulness as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure;
- (3) impulsivity or failure to plan ahead;
- (4) irritability and aggressiveness, as indicated by repeated physical fights or assaults;
- (5) reckless disregard for safety of self or others;
- (6) consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations; and
- (7) lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another.

DSM-IV-TR at 706. The DOE-consultant Psychologist found in his report that the individual met diagnostic criteria (1), (4) and (7). Specifically, he found that the individual met criterion (1) because he has engaged in a number of criminal behaviors and behaviors that could be grounds for arrest, including repeatedly raping his wife, assaulting his wife and child, possession of a firearm, fire-setting and abusing substances when he was in school and threatening the principal, resulting in multiple arrests, a bad conduct discharge from the military, expulsion from school, and placement in residential treatment as an adolescent. He found that the individual met criterion (4) because he demonstrated irritability and aggressive behavior by repeated assaults including striking his son, striking his wife, swearing at them, and allegations of choking his son. Finally, he found that the individual met criterion (7) because he displayed a lack of remorse for his actions by rationalizing having hurt or mistreated his wife and child, rationalized his having raped his wife, denied the need for sexual addiction counseling, and defended his multiple violations of the military restraining order against him. May 2009 Report at 10-11.

### **2. The Individual's Alleged Anti-social Behavior as a Child and Young Adult**

At the hearing, the individual testified that when he was in middle school, he was in the company of another boy who started a fire by igniting some rubber cement, and the individual's shoe caught fire when he attempted to stamp out the flame. The individual stated that he immediately admitted

guilt, along with the person who had set the fire. As a result, he served 20 community service hours and a charge was put on his juvenile record for reckless fire starting. TR at 74-75. As an exhibit, the individual provided a September 2009 letter from his middle school principal, who acknowledged that the individual had not ignited the rubber cement, but that his shoe had caught on fire, and that the incident had disrupted the school day. He stated that the individual had no other disciplinary problems while in middle school, and in fact was a highly respected Eagle Scout and involved in church activities. Individual's Exhibit (Ind. Ex.) 35.

The individual described his "rebellious years" as occurring at ages 12 to 14, when he was beginning high school. He testified that he wore T-shirts with drawings on them of heavy metal bands that he liked, along with a leather jacket, combat boots and jeans. He stated that he would loiter in front of his high school with the people who would smoke. He testified that his locker was searched by school authorities, and they discovered a picture that he had drawn which depicted his principal being hung in front of the high school. The principal told the individual that he felt threatened by the picture and recommended that the individual be expelled. The individual stated that he was surprised that his principal felt threatened because the principal was six foot four and a former marine. He stated that his parents were contacted, and he was enrolled in a private, residential high school, where he met with a counselor on a weekly basis. He stated that he returned to his former high school for his sophomore year, that he changed his manner of dress, and participated in varsity sports. He stated that his principal appreciated that the individual had changed his attitude. TR at 78-81. The individual submitted a September 2009 letter from his high school football coach who confirmed that the individual played football during his senior year and performed well. Ind. Ex. 33. The football coach stated that the individual never missed practice, was always on time, prepared and ready to perform his best, and that he worked tirelessly to help the team succeed. *Id.* The individual also worked during high school as an intern for a chiropractic orthopedist. In a recent letter submitted by the individual, the chiropractic orthopedist reported that the individual was punctual, committed to his job, considerate to the patients, and caring. Ind. Ex. 22.

Based on this testimony and evidence, I find that the fire-starting incident in middle school was not premeditated or intentionally destructive on the part of the individual. While that individual exhibited rebellious behavior and one instance of possibly threatening behavior during his first year of high school, it appears that after he returned to that high school for his sophomore year, he conducted himself responsibly at school and in after-school activities.

### **3. The Individual's 1995 Arrest for a Firearms Charge of Carrying a Loaded Weapon and Alleged Possession of Counterfeit Money**

The individual testified that he was attending a computer show in a neighboring state, and the parking attendant suspected him of trying to use counterfeit money, which led the police to search his vehicle. The police found no counterfeit bills, and that was not the reason for his arrest. Prior to the search of his car, he told the police that there was a loaded weapon in his car, due to his being in the military. His permit for carrying a loaded weapon was not effective in the state where he was attending the computer show, so he was arrested, and spent three days in jail. He pled guilty to a misdemeanor crime of carrying a loaded weapon, paid a fine of \$675, and served one year of probation, which he completed successfully. TR at 100-102, May 2009 Report at 3. The individual

testified that he immediately notified his military superiors of his arrest, and that the following year he was permitted to hold a top secret military security clearance. TR at 102.

As described by the individual, his 1995 arrest on a weapons carrying charge does not appear to indicate significant criminal intent on his part, although his failure to be aware of the gun registration requirements in the state that he was visiting indicates some degree of carelessness.

**4. The Individual Pled Guilty in 2002 to Assaulting his Wife with Intent to Commit Rape, and Admitted to Striking his Son in 1997 and to Striking his Wife in 2002**

In his pre-hearing submissions and at the hearing, the individual denied that he pled guilty at his military court martial to the charge of assaulting his wife with intent to commit rape. At the hearing, the individual testified that he did not recall pleading guilty at his 2003 court martial to any sexually-related offense. He stated that the final outcome of his court martial was that he pled guilty only to two assaults involving slapping his wife and his son, and to disobeying the restraining order that prohibited contact with his family. Hearing Transcript (TR) at 122-123.

The DOE Counsel, who stated that he had 21 years of experience as a former military prosecutor and defense counsel, related that he reviewed the arraignments and pleas from the individual's court martial. He opined that the individual was not found guilty by the military court of any sexually-related offense, and that it was not clear from the military records that the individual knowingly pled guilty to such a charge. Under those circumstances, he stated that the Hearing Officer and the medical experts should not draw any negative implications from the guilty pleas concerning the dropped charge of assault with intent to commit rape in the court martial record. TR at 124-129, Ind. Ex. 59.

In light of this statement by the DOE Counsel and my review of the court martial charges (Ind. Ex. 59), I conclude that the court martial charging documents do not indicate whether the individual knowingly pled guilty at his court martial to assaulting his wife with the intent to commit rape. Nevertheless, I find that the record in this proceeding indicates that the individual may have engaged in physical and mental intimidation of his wife and son. At the hearing, the individual acknowledged that he frequently "cajoled" his wife into having sexual relations with him, and that this cajoling included "playful wrestling back and forth" as well as massaging and verbal persuasion. TR at 142. He also acknowledged that the instance of battery on his wife, to which he pled guilty at his court martial, occurred during some "playful wrestling":

Two months prior, I believe in January of 2002, I'd had Lasik surgery on my eyes, so they were still somewhat sensitive. She had inadvertently scratched me, her fingernail caught me under the right eye and drew blood. When she saw that, she was laughing, and I was very hurt by it and shocked, so I slapped her on the leg, the thigh.

TR at 90-91. While the individual's wife did not testify at the hearing, in her 2007 interview with the OPM investigator, she stated that she obtained a divorce from the individual due to his abuse of her and her son and overall domestic violence on the part of the individual. She also stated that she

did not tell the authorities during the individual's military arrest and 2003 court martial all of the things that the individual had done to her because she was still loyal to the individual. She further stated that while the military protective order forbidding the individual to have contact with her was in effect in August 2002, she was afraid of the individual, knew that he had an anger problem, and regarded his behavior as unpredictable. Ind. Ex. 60 at 1-2.

With respect to his treatment of his son, the individual testified that in the 1990's, he assumed the role of a disciplinarian towards his son, and would often raise his voice in the home to get his son to obey. TR at 81. He stated that he would administer corporal punishment to his son by spanking him on the bottom "once or twice to get the point across," and then send him to his room. TR at 88. He stated that the 1997 battery against his son took place at Christmas dinner, when his son refused to eat the prepared food and started to eat from a box of crackers. He stated that he slapped his son on the forehead, a glancing blow on the head that did not injure him. TR at 88-90. He stated that after this event, he "cut way down" on yelling and other discipline, but that his wife harbored some resentment to his raising his voice and causing a hostile environment in those early years. TR at 139. Based on his own statements at the hearing and on his ex-wife's interview comments, I conclude that the individual's physical and mental coercion of his wife and son most likely was not limited to the two instances of battery described above, and that the DOE-consultant Psychologist is correct to assume that the individual demonstrated abusive behavior in the context of his marriage.

## **5. The Individual's Failure to Obey Military Protective Orders**

The individual acknowledged at the hearing that he repeatedly violated the military protective orders that forbade him to have contact with his wife and children in June, July and August 2002. He testified that after the instance in 2002 where he slapped his wife on the leg, his wife requested that he be assigned to live elsewhere, and he was ordered to live in the barracks. At the same time, his commanding officer instituted a military protective order that barred him from having any contact with his wife or children. The individual testified that his wife initiated contact with him by calling his cell phone and by approaching him at the military commissary. He stated that he informed his commanding officer of these initial contacts. TR at 93-95. However, he testified that he rationalized that "if they are contacting me and they didn't ask for this order to be in place, why should I comply?" TR at 96. He stated that he began to violate the order by answering phone calls, initiating phone calls, and by making unpermitted visits to his home. In late August 2002, at his wife's request, the military protective order was lifted, and the individual moved back into his home. However, when his commanding officer discovered, from the individual's wife's counselor, that the individual had violated the military protective order while it was in effect, the individual was arrested in late September 2002 and was incarcerated in a military brig until July 2003. TR at 96-98. In her OPM interview, the individual's wife acknowledged that both she and her husband violated the protective order. However, she also stated that she continued to be fearful of her husband's anger and unpredictable behavior, and that she only requested that the protective order be lifted because she knew he would continue to violate the order, and she wanted to protect him from getting into trouble with the military. Ind. Ex. 60 at 2-3. Based on this information, I conclude that the

individual's violation of the military protective order was deliberate and serious, and that it evidenced a disregard for his wife's emotional state.<sup>4</sup>

## **6. The Individual's Activities Since His Release from Military Custody in July 2003**

The individual testified that following his release from military detention and his discharge from the military, he enrolled in college and completed his degree in June 2006. The individual stated that he worked during this period for minimum wage plus commission as a personal trainer at a gym, and that for about nine months in 2004-2005 he lived in his car because he did not have enough money to pay rent. TR at 108-109. In 2005, he obtained employment with a DOE contractor. He now works for another DOE contractor in a professional capacity.

At her OPM investigation interview in June 2007, the individual's wife stated that the state court that granted their divorce ordered the individual to participate in anger management counseling. Ind. Ex. 60 at 1. The individual stated that following his release from the base brig, while he was still on duty, he attended a counseling group for four months on the military base dealing with anger management issues, identifying what types of incidents would incite a certain response that would then lead to the secondary response of anger. He then attended 38 weeks of group counseling where he learned how to deal with loss and frustrations that can lead to anger and resentment. TR at 154. He submitted a document entitled "Domestic Violence Program Report" which indicates that the individual had self-terminated counseling after attending 38 sessions. In this Report, the individual's counselor notes that the individual was positive, worked hard in the group, and had very good listening skills. However, the counselor gave him a low evaluation (2 out of 5 points) for showing insight concerning abusiveness, its effects on partners and children, and its dangerousness. Ind. Ex. 48. Although the individual initially terminated this counseling in June 2004, the head of the counseling firm reported to the OPM investigator that the individual voluntarily returned and completed additional counseling in August 2004. During his interview with the OPM investigator, the head of the counseling firm, a licensed clinical social worker, reviewed the individual's file, and stated that he did not see any indication that the individual had a condition or treatment that could impair his judgment or reliability. Ind. Ex. 50. At the hearing, the individual stated that the anger

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<sup>4</sup> At the 2007 OPM interview, the individual's wife stated that following the individual's release from military custody in July 2003, she filed for divorce and obtained an order from a state court forbidding the individual to have contact with her or the children. She stated that while this order was in effect, from August 2003 until August 2006, the individual violated the order by telephoning nearly every month. She stated that she also initiated contacts with the individual during this time, and that she did not inform the court that the individual had violated the restraining order. Ind. Ex. 60. The individual testified that he did not violate the state court's restraining order. TR at 104. At his 2009 PSI, he asserted that the state court's order permitted supervised visitation, and that any contacts with his wife were incidental to his picking up or dropping off the children. DOE Ex. 5 at 97-98. Based on the available evidence, the individual has not established that he obeyed all of the terms and restrictions in the state court's restraining order. However, it appears that his violations of the order were not of a nature to prompt his wife to seek court sanctions against him.



management counseling allowed him to understand that he needed to be accountable for his actions, and not to hold others accountable for things that are his own fault. TR at 155.

The individual testified that he still gets angry and frustrated on occasion, but that now he understands what leads to those feelings and is able to vent in a more constructive way. TR at 154-155. He stated that the chief frustration in his life at present is his inability to obtain the DOE security clearance that would permit him to continue his current employment. He stated that he deals with this frustration by speaking to friends and supervisors about it, taking action to present his case for a security clearance, and through daily physical exercise. TR at 156. He asserted that since March 2002, when he slapped his wife, he has had no physical altercations with anyone. TR at 110. The individual submitted a letter from someone whom he dated from March until June 2008. Ind. Ex. 52. The person stated in her letter that she and the individual enjoyed each others' company and are still good friends. She complimented him for being a devoted father and being devoted to his job. However, she stated that she observed his temper, which she characterized as not "severe, but definitely something to work on." Ind. Ex. 52. The individual testified that he requested for her to be honest in her letter, and that he believes that she is referring to a couple of incidents where he was upset after being hit on the head while moving some furniture, and feeling frustrated while preparing his vintage car for a car show. He believes that his anger was directed towards the situation and not towards a person. TR at 111-112.

The individual also presented the testimony of two housemates who are also co-workers. The first housemate/co-worker stated that he shared a house with the individual from March 2007 until June 2008. TR at 46. He stated that the individual is a trustworthy, church-going person who adheres to his church's teaching to abstain from alcohol. TR at 44, 53. He testified that the individual is an open and caring person, and has a calm and deductive manner. TR at 43-44. He stated that he observed the individual interacting with the individual's two daughters during a lengthy visit. He stated that the individual and his daughters had a lot of fun together, and he did not observe the individual lose his temper with them or discipline them. TR at 46-47. He stated that he observed the individual and the individual's girlfriend when they were dating in March through June 2008, and that he did not see them argue. TR at 51. He stated that he did not observe the individual lose his temper, but that when he was engaged in his hobby of rebuilding old cars, he would occasionally vent his frustration by using a cuss word here and there. TR at 48. The individual's second housemate/co-worker stated that he shared a house with the individual from June 2008 until June 2009. He also testified that the individual abstains from alcohol. TR at 69. He stated that the individual was "very even-keeled" as a housemate, and did not get upset even when the second housemate/co-worker neglected to wash dishes for several days. TR at 56-58. He stated that he observed the individual being very supportive to a woman the individual was dating who was having medical problems and was unable to work. TR at 59. The second housemate/co-worker stated that when the individual's daughters visited, it was clear that they loved him very much, and there was never any indication of an unhealthy relationship between the individual and his daughters. TR at 64. The second housemate/co-worker stated that he and the individual do a lot of "car-associated stuff" and the only time he has seen the individual get upset is when he is frustrated while making car repairs. TR at 59. Both housemate co-workers testified that the individual was calm and trustworthy, both at home and in a work environment, where they have known him for approximately four years. TR at 43-45, 60-63.

The individual's friend/co-worker testified that he has worked with the individual for about three years. He stated that the individual has worked on some of the projects that he oversees. The friend/co-worker stated that the individual has been an outstanding employee, and that he recommended the individual for a performance award. He described the individual as a self-starter, who is very meticulous, and get's the job done either on time or before. TR at 14-15. The individual's supervisor testified that he has supervised the individual for about two years. He stated that he is aware of the problems in the individual's background, but that he has observed no conduct which could be perceived as anti-social. He testified that the individual's activities in the workplace have been highly professional and that he is a very good employee. TR at 33. He testified that the individual interacts well in the workplace, is highly reliable, and performs his work independently and on time. TR at 35. He stated that the individual willingly acknowledges any mistakes that he makes in his work. TR at 37.

The individual's pastor testified that he has known the individual since about 2004, that he is a regular churchgoer, and that the individual volunteers to keep church records and to organize the church's home teaching efforts. TR at 22-23. He stated that the individual is polite with others, and he has never seen the individual lose his temper. TR at 24. The individual's pastor stated that he and the individual have discussed the individual's family issues, that he believes that the individual accepts responsibility for any difficulties he's had, and that the individual expresses a desire to support his ex-wife and children both financially and emotionally. TR at 26-27. In her June 2007 OPM interview, the individual's wife stated that the individual began making voluntary monthly support payments in January 2007. Ind. Ex. 60. The individual submitted a recent letter from his son, who is now 18. In that letter, the individual's son states that since his parents' 2004 divorce, his father has made great efforts to be a good father, and to visit and stay in touch with his children with frequent phone calls, letters and packages. He states that he considers his father to be of the highest character, and that he goes to him for advice and support. Ind. Ex. 55. The individual also submitted a recent letter from his ex-father-in-law. In that letter, his ex-father-in-law states that, since the divorce, the individual has been supportive of his children, has made at least yearly visits to see his children, and that they have spent their summer vacations with him. He stated that the individual stayed at the ex-father-in-law's home while visiting his daughters in October 2009, was patient with his ex-wife in scheduling those visits, and respected her request not to have face-to-face contact with him. Ind. Ex. 53.

## **7. The Opinions of the Individual's Psychologist and the DOE-consultant Psychologist Concerning the Hearing Evidence and Testimony**

The individual's psychologist testified after hearing the testimony of the individual and his other witnesses. She stated that she has had three sessions with the individual in November 2009, where they discussed his problems in obtaining a DOE security clearance, and she has read all of the materials relevant to the hearing, including the DOE-consultant Psychologist's report. She testified that there is abundant evidence and hearing testimony indicating that the DOE-consultant Psychologist's diagnosis of ASPD is incorrect. TR at 163. As an initial matter, she stated that the individual does not meet the criteria for ASPD because there is no indication that he had a conduct disorder prior to the age of 15. She stated that as outlined in the DSM-IV-TR, to serve as a basis for ASPD, such a conduct disorder should involve bullying, threatening, or intimidating, aggressive

behavior towards people or animals, disrespect of the rights of others, physical cruelty towards people or animals, stealing, or the use of a weapon. TR at 164-165 citing DSM-IV-TR at 702, 93-94. She stated that the individual's fire starting incident in middle school was accidental in nature, and his rebellious behavior in his first year of high school, including the violent drawing depicting his principal, was fairly normal male behavior at that age. TR at 164, 169-170. She also testified that the individual's 1997 firearm arrest indicated an ignorance of state law and did not meet any criterion for ASPD. TR at 168.

The individual's psychologist also stated that after reviewing the materials in this proceeding and speaking with the individual, she does not believe that the individual put his wife in fear so that she would consent to have sexual relations. TR at 167. She stated that the individual's violation of the military protective order was considered very serious by the military, but that this was really a domestic situation where both parties admitted to violating the protective order. She stated that in her experience with domestic violence, it is very common for both victims and perpetrators to violate protective and restraining orders. TR at 173-175. She stated that she believes that the individual has matured from these mistakes, and that he is presently at very low risk for displaying bad judgment in the future. TR at 172-173. She stated that she believes that the individual is intelligent, mature and responsible, and she sees no evidence of current temper or anger issues. TR at 179.

After listening to the testimony of the individual's psychologist and the other witnesses, the DOE-consultant Psychologist stated that he felt a little less confident in his diagnosis in view of the positive aspects of the individual's life. TR at 184. He stated that it appears that the individual met the criteria for ASPD more in the past than in the present, which is troublesome for a chronic condition such as ASPD. However, he testified that the DSM-IV-TR does state that ASPD may become less evident or remit as the individual grows older, particularly by the fourth decade of life. TR at 184 citing DSM-IV-TR at 704. He stated that he believes that the individual has demonstrated quite a bit of maturity and improvement over the last several years and that he did not have the opportunity to hear about this progress during his April 2009 evaluation. He testified that he continues to be concerned about the individual's past history and past judgment, because the past is a good predictor of the future. However, he testified that it was in the individual's favor that he has not been involved in any significant negative behavior in the last few years. TR at 185. He stated that the individual's risk of displaying bad judgment was not high, due to his improvement in the last several years. In light of his past actions in 2002 and before, he believed that the risk is somewhere between a low and a moderate risk. TR at 186.

## **8. The Individual's Current Mental Condition and his Risk of Exercising Poor Judgment in the Future**

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual has been properly diagnosed with a mental condition. *See* 10 C.F.R. § 710.27. Hearing Officers properly give deference to the expert opinions of psychologists and other mental health professionals regarding these diagnoses. *See, e.g., Personnel Security Hearing*, Case No. TSO-0401 (2006). In cases like this one, where the medical experts disagree concerning a mental illness diagnosis, the DOE Hearing Officer must make a determination based on the available evidence.

I am persuaded by the individual's psychologist that a diagnosis of ASPD is not appropriate for this individual. As discussed above, the individual's childhood and adolescent delinquencies do not appear to be sufficiently serious to constitute evidence of a conduct disorder which involves a repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms and rules are violated. DSM-IV-TR at 702. Nor is the individual's 1995 arrest on a weapons registration charge significant evidence of disregard for lawful behavior or the rights of others. Contrary to the individual's psychologist's opinion, however, I find that the evidence in this proceeding indicates the likelihood of on-going abusive and intimidating actions by the individual towards his wife and son during his marriage, including ignoring military orders to have no contact with them. However, these actions alone, although serious in nature, appear insufficient to support a pervasive, lifelong pattern of disregard for, and violation of, the rights of others, that is the essential feature of ASPD. *Id.* at 701. See *Personnel Security Hearing*, Case No. VSO-0279 (1999) (Hearing Officer rejected diagnosis of ASPD, finding that the individual's background does not support an ASPD diagnosis that implies a life-long pattern of defiance of the rules and laws of society for the purpose of self-gain and self-enhancement and a disregard for the rights and feelings of others). Even if I accepted the validity of the DOE-consultant Psychologist's diagnosis, I would agree with his assessment that the individual has been in remission from any indications of anti-social behavior since his military incarceration in late September 2002, a period of more than seven years.

In the absence of a diagnosable mental illness or condition, the individual still may not be eligible for access authorization if he exhibits an unacceptable level of risk for repeating the aggressive behavior and lapses in judgment that led to his military incarceration in 2002 and his bad conduct discharge 2003. However, I believe that there is ample evidence to support a finding that the individual is at low risk for engaging in future acts involving aggressive behavior, unreliability, or poor judgment. Following his release from military detention in 2003, the individual engaged in extensive anger management counseling. His supervisor, friend/co-worker, and housemate/co-workers all testified that the individual exhibits a calm demeanor and does not display inappropriate aggression or anger. The letter from a 2008 girlfriend stated that she observed the individual's anger, but would not characterize it as severe. In addition, in the years since his discharge from the military, the individual has avoided problems with law enforcement, and has made mature and responsible life choices. He completed college, obtained a professional position with a DOE contractor, and is a well-regarded employee. He is active in his church and has adopted his church's values by abstaining from alcohol and by providing emotional and voluntary monetary support for his children. The testimony of his housemate/co-workers indicates that he has a healthy relationship with his daughters, and the letter from his son indicates the same. Finally, his ex-father-in-law states that the individual has been respectful of his daughter's wishes to have no direct contact with him. In light of these developments, I find that the individual is at low risk for engaging in illegal, unreliable or irresponsible behavior in the future.

#### **IV. CONCLUSION**

For the reasons set forth above, I find that DOE Security properly invoked 10 C.F.R. § 710.8(h) in denying the individual an access authorization, having received the diagnosis of a board-certified psychologist that the individual has a "mental condition of a nature which, . . . causes, or may cause,

a significant defect in judgment or reliability.” However, I have determined that ample evidence exists and has been presented to overcome DOE Security’s concerns. I find that, at this time, the individual does not have a mental condition that causes or may cause a significant defect in the individual’s judgment and reliability. In addition, I find that the individual is at low risk for acting unreliably or with poor judgment in the future. I therefore find that granting the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual should be granted an access authorization. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: January 27, 2010